

in effect and Producer is not in default, commencing on the date the first Lot is delivered to the Facilities. The Minimum Annual Payment is not in addition to the payments contemplated in Section 16 but merely reflects that such payments shall be at least \$30.00 per Pig Space for each 12 month period. With regard to any Lot for which delivery and closeout occur in separate 12 month periods, Cooperative, in determining the Minimum Annual Payment, shall apply the pro-rata portion of the Producer Payment (as hereinafter defined) attributable to the length of time the Lot was present in the Facilities during such 12 month period. This Agreement is for ~~1820~~ 1920 Pig Spaces. <sup>05</sup> <sub>TD</sub>

16. **PAYMENT TO PRODUCER.** Cooperative shall pay Producer, subject to Producer's compliance with the terms and conditions of this Agreement, a payment based on the following payment calculation (the "Producer Payment"). Such payment, shall be paid to Producer based upon the actual number of swine delivered to market from a Lot and shall be payable approximately 14 days after receipt by Cooperative of closeout data on such Lot.

#### PRODUCER PAYMENT CALCULATION

**PRODUCER PAYMENT** = (Production Cost of Gain Payment + Gain Per Head Payment) x Number of Hogs Marketed

Where:

Production Cost of Gain Payment = (Production Cost of Gain per Cwt. x -.25) + \$11.00

Production Cost of Gain per Cwt. = Cost of Supplies, including delivery, mixing, grinding or other processing / Total Cwt. Gain

Total Cwt. Gain = Total Cwt. of Hogs Marketed - Total Cwt. of Pigs In (delivered to Facilities)

Notwithstanding the above Production Cost of Gain Payment formula, the maximum Production Cost of Gain Payment shall be \$7.25 and the minimum Production Cost of Gain Payment shall be \$4.75.

Gain Per Head Payment = (Total Cwt. Gain / Number of Hogs marketed) x \$3.00

Examples of Payment calculations are attached hereto as Examples I and II.

**PRODUCER UNDERSTANDS AND AGREES THAT NEITHER COOPERATIVE, ITS AGENTS OR EMPLOYEES, NOR FARMLAND, ITS AGENTS OR EMPLOYEES, WARRANT ANY SPECIFIC LEVEL OF PERFORMANCE. ANY PERFORMANCE LEVELS INDICATED IN EXAMPLES I AND II ARE FOR PURPOSES OF ILLUSTRATION ONLY.**

17. **EVENTS OF DEFAULT.** Producer shall be in default upon the happening of any of the following events:

- a) Default under any financing agreement, security agreement, note or any other document, writing or instrument evidencing an obligation of Producer to a lending institution;
- b) Actual or attempted levy, seizure or attachment of any of the swine or any of Cooperative's property delivered to the Facilities or otherwise to Producer;
- c) Producer using abusive language or threatening physical harm to Cooperative, Farmland or their authorized representatives or preventing or impeding Cooperative, Farmland or their authorized representatives from inspecting or examining the Facilities or the swine;